IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 809 OF 2006

IN

FIRST APPEAL ST.NO. 3505 OF 2006

IN

B.C.C.S.C. SUIT NO. 4264 OF 2002

M/s Shree Hari Co-op. Housing
Society Ltd. & Ors. .... Applicants

Vs.

Mr. Ashok Phalke & Ors. .... Respondents

Mr. S.D. Patil for Applicants
Mr. E.A. Sasi for Respondent for Respondent no.1

CORAM : A.S. OKA, J.
DATE : 14TH DECEMBER, 2007

P.C.

1) Heard learned Advocate appearing for the parties.

2) The prayer in this application is for condonation of delay of 1 year and 282 days. The submission of the learned Counsel appearing for Respondent No. 1 is that there is no explanation for delay of 1 year and 282 days and hence the Applicants are not entitled to the benefit of Section 14 of the Limitation Act, 1963.

3) Perusal of the Application shows that the challenge in the Appeal is to a decree passed on 8th April 2004 by invoking provisions of Rule 10 of Order 8 of the Code of Civil Procedure, 1908. The averments made in the Application disclose that the Applicants became aware of the decree in September 2004 when they were served with the notice of an Application taken out in execution of the said decree. Immediately thereafter, a Notice of Motion was taken out by the Applicants for setting aside the decree. The said Notice of Motion was dismissed on 3rd October 2005 holding that the said Notice of Motion for restoration was not maintainable. It is stated that the Applicants were advised to file a Writ Petition against the said order. Thereafter, the legal advise received by the Applicants was to prefer First Appeal against the original decree instead of challenging the order passed on the Notice of Motion. Accordingly the Application was made for certified copies of decree on 23rd January 2006. The certified copies were delivered on 10th February 2006 and the Appeal has been preferred on 13th February 2006.

4) It is thus clear that there is no more than sufficient explanation for delay in preferring the Appeal. Accordingly Rule is made absolute in terms

of prayer clause (a). Appeal shall be placed for admission after the same is registered.

(A.S. OKA, J.)